

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA13-049-03
LOCATION OF PROPERTY	1770 North First Street
ZONING DISTRICT	CG(PD) Planned Development
GENERAL PLAN DESIGNATION	Transit Employment Center
PROPOSED USE	Planned Development Permit Amendment to allow the construction of an approximately 94,199-square foot, 171-room four-story hotel on a 2.9-gross acre site
ENVIRONMENTAL STATUS	Determination of Consistency with the Bay 101 Casino and Mixed-Use Project Environmental Impact Report (Resolution No. 77165)
OWNER/ADDRESS	SJ Sweetwater Holdings LLC 1590 Berryessa Road San Jose, CA 95133
APPLICANT/ADDRESS	Deena Morsilli HMH 1570 Oakland Road San Jose, CA 95131

FACTS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Project Description.** Planned Development Permit Amendment to allow the construction of an approximately 94,199-square foot, 171-room four-story hotel on a 2.9-gross acre site. The amendment is for previously approved File Nos. PD13-049 and PDA13-049-01. 27 non-ordinance size trees will be removed and replaced with 104 new 15-gallon trees on site.
2. **Site Description.** The 2.9-gross acre site is currently vacant. The site is located on the southeast corner of North 1st Street and Matrix Boulevard, within close proximity to Mineta International Airport and has access driveways from North First Street. The site is bounded by Bay 101 Freeway to the north, San Jose office plaza beyond North 1st Street and Metro Airport Station to the south, office buildings to the east and vacant parcel to the west.
3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Transit Employment Center. The Transit

Employment Center designation is applied to areas planned for intensive job growth due to their importance as employment districts to the City and high degree of access to transit and other facilities and services. The project is consistent with the General Plan land use designation of Transit Employment Center in that it would allow the development of commercial uses (a four-story hotel), which would attract jobs to the site and contribute to a balanced economic base in the area. Additionally, the project complies with the following General Plan policies:

- a. **Land Use and Employment Policy IE-1.2:** This policy plans for the retention and expansion of a strategic mix of employment activities at appropriate locations throughout the City to support a balanced economic base, including industrial suppliers and services, commercial/retail support services, clean technologies, life sciences, as well as high technology manufacturers and other related industries. The hotel, use will contribute to a balanced economic base in the area.
 - b. **Land Use and Employment Policy IE-1.5:** This policy promotes the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale. The project site is served by a nearby light rail train station and various bus routes. The proposed Planned Development Permit Amendment will promote the intensification of employment activities in the area. Development of the hotel allows for an employment intensive use on the site.
4. **General Development Plan Conformance.** The subject site is zoned CG(PD) Planned Development Zoning District established with File No. PDC13-017. Pursuant to Section 20.100.910 of the San José Municipal Code, a Planned Development Permit Amendment is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure in conformance with the Zoning Ordinance.

The subject site will be developed with a 4-story hotel and is part of the Bay 101 Casino and Mixed-Use Project approved with Planned Development Zoning File No. PDC13-017 (Ordinance No. 29489)], which was adopted on September 23, 2014 and allows the development consistent with the CG Commercial General Zoning District. The development standards applicable to the project are as follows:

- a. **Setbacks.** There is a 10-foot minimum setback requirement from the front property line along North First Street, five-foot setback requirement from Old Bayshore Drive frontage and the interior setback requirement is zero feet. A provision of a ten-foot easement is required from the interior east side property line.
- b. **Height.** The maximum height permissible in the CG(PD) Planned Development Zoning District is 310 feet. The proposed hotel is 55 feet 6 inches at its highest point, which is under the maximum requirement.

The proposed project meets the requirement of CG(PD) Planned Development Zoning, per Table 1 below:

Building Setbacks (Minimum)	Required in feet	Provided in feet
a. Frontage (North First Street, south side)	10 feet	10'-5"
b. Frontage (Old Bayshore, west)	5 feet	332'-0" +, -
c. Interior Side (east)	Zero feet, or 10'-0" easement, as applicable	10'-0" (easement provided)
d. Frontage (North Fourth Street, north side)	10 feet	889'-0" +, -
Building Height (maximum)	310 feet	55'-6" overall

Table 1: Setbacks and Height Requirement

- c. *Parking.* The parking requirement for 171 guest rooms and 20 employees, with one space per guest room and one space per employee, will be 191 spaces. A reduction of up to 20% of the parking requirements for the hotel is allowed because it is within 100 feet of Metro/Airport VTA Light Rail Station. [The parking space with 20 percent reduction results in 153 parking spaces, which are provided on site.

The project meets the requirement of vehicle, bicycle and motorcycle parking spaces on site per Table 2 below:

Parking Requirement per Zoning Ordinance		Parking Requirement for Project	Parking Provided
Vehicle	1 per guest room or suite, plus 1 per employee	171 rooms plus one space per employee =171+20=191 spaces @20% reduction= 153 spaces	153 parking spaces including parking for 20 employees
Bicycle	1 space plus 1 per 10 guest rooms	17.1+1= 18 spaces	18 spaces provided on site (4 long term and 14 short term)
Motorcycle	1 space per 20 code required auto parking spaces	8 spaces required	8 spaces provided

Table 2: Parking Requirements

5. North San Jose Urban Design Guidelines

*The site is in the North San Jose Development Policy Area available at the following url:
<https://www.sanjoseca.gov/home/showpublisheddocument/15619/636681401842500000>*

The project conforms to the North San Jose Urban Design Guidelines in that the building placement is at the front of the site, and the front entrance faces the project site's interior which is articulated with opaque glazing walls and additional architectural treatment.

The project also conforms to the Commercial Design Guidelines in that the proposed hotel building contains a base, mid-section and roof parapet which is differentiated with different treatment of materials and texture. The roof parapet within the middle-section of the building is raised to vary the roof line, therefore the building form and scale meet the Guidelines.

The proposed building design meets the commercial guideline requiring a balance of building form and scale with the use of varied materials and colors. The base has stone veneer, the mid-section has light blue and gray vertical panels which contrast with the white cement plaster with horizontal wood beam accents. The top has a white roof parapet which provides a vibrant contrast, and differentiates the treatment of the first, middle and top stories into three distinct parts, per the guideline.

Pursuant to perimeter landscaping guideline, a mixed planting of trees, shrubs and ground cover is required in the areas between buildings and the sidewalk. The proposed site design will have sufficient perimeter as well as parking lot trees and shrubs with a mix of plantings, as per the approved landscape plan, and vertical green vines will be provided near the pool's fence area, along North First Street, for added screening and landscaping.

6. **CEQA.** A Determination of Consistency with the Bay 101 Casino and Mixed-Use Project Environmental Impact Report (Resolution No. 77165) was made.

FINDINGS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Planned Development Permit Amendment Findings.** This Permit Amendment does not negate any of the findings required under Section 20.100.940 of the Zoning Ordinance, which were made part of the original Planned Development Permit File No. PD13-049, since it does not alter the general character, use or intensity of the project approved under that permit. Chapter 20.100 of Title 20 of the San José Municipal Code establishes these additional required findings for issuance of a Planned Development Permit Amendment:

- a. The Planned Development Permit Amendment, as issued, is consistent with and furthers the policies of the General Plan.

Analysis: The subject site has a General Plan Land Use/ Transportation Diagram designation of Transit Employment Center. This designation is applied to areas planned for intensive job growth due to their importance as employment districts to the City and high degree of access to transit and other facilities and services. The subject permit would allow the development of a four-story hotel, which would bring jobs to this underutilized site, and will contribute to a balanced economic base in the area.

The project conforms to the Land Use and Employment Policies IE-1.2 and IE-1.5 of the General Plan in that the development of the hotel promotes an employment intensive use on the site and strengthens economic base, as discussed above.

- b. The Planned Development Permit Amendment, as issued, conforms in all respects to the planned development zoning of the property.

Analysis: The proposed project conforms to the approved Development Standards for the Planned Development Zoning File No. PDC13-017, as discussed above. This Permit Amendment is for reduction in the number of stories from a 7-story to a four-story hotel and exterior architectural modifications to the proposed hotel. The proposed project is consistent with the requirement of CG(PD) Planned Development Zoning File No. PDC13-017 with respect to setbacks, height and parking, as discussed under Zoning Conformance Section above.

- c. The Planned Development Permit Amendment, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is in the North San Jose Area Development Policy and was analyzed for consistency for hotel use under previous File Number PD13-049. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project was covered under the North San Jose EIR. No further traffic analysis was required, and the traffic impact fees are paid in full under File Number PD13-049.

The project is in compliance with Council Policy 6-30, Public Outreach Policy in that the project site was posted with a project information sign, and a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website.

- d. The interrelationship between the orientation, location, mass and scale of building volume, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

Analysis: The project includes construction of a new four-story hotel oriented towards North First Street, with 153 parking spaces, new landscaping and trash facilities. The building's mass and bulk are offset through changes of wall plane, materials, and colors. The proposed hotel has a height and massing which are consistent with other commercial and office buildings in the vicinity. The proposed hotel has a contemporary architectural style, which is harmonious with the office and commercial buildings nearby, and the project will be mutually compatible and aesthetically harmonious to other uses and structures on site.

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

The environmental impacts of the project, including but not limited to vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties, in that the project involves construction of a new four-story 171 room hotel with associated site improvements, and

new trees, landscaping and retaining walls will aid in adequate screening and buffering noise or vibration or any other negative impacts to the surrounding area. Public Works reviewed the project for Storm Water Management controls and provided their Final Memo dated 7/2/2020. The construction hours will be limited to the construction and site improvements of the building between 7:00 a.m. and 7:00 p.m., Monday to Friday.

A Determination of Consistency to the Bay 101 Casino and Mixed-Use Project Environmental Impact Report (Resolution No. 77165) was made. Mitigation measures addressing air quality, biological resources, hydrology and water quality, and hazards and hazardous materials were identified.

- f. Traffic access, pedestrian access and parking are adequate.

Analysis: The proposed project conforms to the parking requirements set forth in the Zoning Ordinance for a hotel use. This site is accessible by an existing two-way drive aisle and a new 26-foot-wide two-way driveway at the southwestern corner along North First Street. Adequate pedestrian access is provided via walkways and paved areas connecting the building entrances to the adjacent public sidewalk. The proposed porte cochere is located on the north side of the building for easy drop-off and pick-up of hotel guests and to relieve traffic congestion, while enhancing circulation on site.

The project proposes surface parking for a total of 153 vehicle parking spaces, 18 bicycle parking and 8 motorcycle parking spaces, which meet the parking requirement and the site will have adequate circulation space for loading, drop-off, pick up, and ingress and egress of vehicles. Pedestrians can easily access the building from the west and north side of the building through the lobby.

Minor sidewalk improvements, easement dedication and a minor signal modification is required to provide video detection on all approaches at the intersection of North First Street and Metro Drive, per Public Works conditions of approval. The driveway access to the site from North First Street is adequate in that the overall circulation of the project site is sufficient for the proposed uses on site, per the Public Works Final Memo dated 7/2/2020.

In accordance with the findings set forth above, a **Planned Development Permit Amendment** for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit Amendment within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit Amendment shall automatically expire four years from and after the date of issuance hereof by the Director, if within such time period, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit Amendment in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Planned Development Permit Amendment for Hilton Home2 Embassy Suites, 1770 N. First Street, San José, CA 95133", dated received December 14, 2021 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Conformance with Approved Zoning.** All applicable conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning, File No. PDC13-017, remain in effect. This Planned Development Permit Amendment is for the construction of a 94,199-square foot, 171-room four-story hotel.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
11. **Trash.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
13. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
15. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
16. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
19. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
20. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
21. **FAA Clearance.** In compliance with federal regulations, the permittee shall file for FAA airspace review of the highest points of the proposed hotel via submittal of Notice(s) of Proposed Construction or Alteration (FAA Form 7460-1), obtain FAA "Determination(s) of No Hazard", and comply with any conditions set forth in the FAA determinations.

- a. The technical data on the FAA forms shall be prepared by a licensed civil engineer or surveyor and use location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to next highest foot. FAA issuance of no-hazard determinations is required prior to City issuance of a building permit for construction.
 - b. Any conditions set for in the FAA determinations (when issued) requiring physical alterations to the final design of the project, such as roof-top lighting or marking, shall be incorporated into the project through a PD Permit Adjustment prior to City issuance of a building permit for construction.
 - c. Any conditions set for in the FAA determinations (when issued) requiring filing of Notice(s) of Actual Construction or Alteration (FAA Form 7460-2) shall be completed prior to City issuance of a certificate of occupancy.
22. **Tree Removals.** Twenty-seven non-ordinance-sized trees are approved for removal with this permit amendment. In accordance with the City's standard tree replacement ratio for the removal of twenty-seven non-ordinance size trees, the project applicant shall require planting of 27 new 15-gallon trees or 14 new 24-inch box trees, at a ratio of 1:1, on site. Per the approved Landscape Plan, 82 new 15-gallon trees and 11 new 24-inch box trees, for a total of 104 trees, will be planted on site. An off-site tree replacement in-lieu fee, at \$775 per tree, shall be incurred if the applicant is unable to meet the tree planting requirement of 27 new 15-gallon trees.
23. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Building or Grading Permit has been issued.
24. **Replacement Trees.** 82 new 15-gallon trees and 11 new 24-inch box trees, for a total of 104 trees, are proposed to replace those removed as part of this project. In accordance with the City's standard replacement ratio, 27 new 15-gallon trees or 14 new 24-inch box trees are required as tree replacements on-site. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with said mitigation requirements. Such evidence shall be labeled "File Number **PDA13-049-03**" and provided to the Planning Project Manager, prior to the issuance of Building Permits or any Public Works clearances.
25. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final approved plan set. Landscaped areas shall be maintained and watered, and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, water efficient landscape standards for new and rehabilitated landscaping.
26. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

27. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, LED fixtures as shown in the Approved Plan Set. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property. All proposed changes shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
28. **Affordable Housing Financing Plans.** The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing. By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.
29. **Fire Department Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Chapter 5, Appendix BB, Appendix C, and Appendix D of the 2016 California Fire Code (CFC) with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
30. **Emergency Vehicle Access.** Width, length, and grade of the fire apparatus access roads, streets, and avenues shall be identified on project plans and submitted to the Fire Chief for approval. Every portion of all building exterior walls shall be within 150 feet of an access road.
31. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, PDA13-049-03, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- d. *Project Addressing Plan.* The project applicant shall submit an addressing plan for approval for the subject development.

32. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development- on file with the Planning Division.

33. **Standard Environmental Conditions.**

a. Air Quality.

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and contact person regarding dust complaints.

b. Biological Resources.

- i. Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size Replacement Tree
	Native*	Non- Native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>*Native trees are those that are naturally inherent to the Santa Clara Valley. These species include, but are not limited to, California Bay Laurel, Aptos Blue Redwood, Valley Oak, California Buckeye, Box Elder, Western Sycamore, and Red Willow.</p> <p>x:x = tree replacement to tree loss ratio 38-inch tree equals 12.1 inches in diameter 24-inch box tree = two 15-gallon trees</p>				

- ii. In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement.
- iii. The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- iv. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of grading permit(s), in accordance to the City Council Approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- v. Tree Protection Standards. The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning, Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting

- licensed arborist. Fencing and signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
- vi. The project is subject to applicable Santa Clara Valley Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org>.
- c. Geology and Soil.
- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
 - ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
 - v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
 - vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee.

d. Hazards and Hazardous Materials

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of the on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - 1) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - 3) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

e. Hydrology.

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- ix. The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
 - 1) Restriction of grading to the dry season (April 30 through October 1) or meet City requirements for grading during the rainy season;
 - 2) Utilize on-site sediment control BMPs to retain sediment on the project site;
 - 3) Utilize stabilized construction entrances and/or wash racks;
 - 4) Implement damp street sweeping;
 - 5) Provide temporary cover of disturbed surfaces to help control erosion during construction; and
 - 6) Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.
- f. Noise Standard Project Conditions.
 - i. Construction hours within 500 feet of residential uses will be limited to the hours of 7:00 a.m. and 7:00 p.m. weekdays,
 - i. Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
 - ii. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;
 - iii. Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses;
 - iv. Locate staging areas and construction material areas as far away as possible from adjacent land uses;
 - v. Prohibit all unnecessary idling of internal combustion engines;

- vi. If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- vii. If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.
- viii. If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Notify all adjacent land uses of the construction schedule in writing.
- ix. The contractor will prepare a detailed construction plan identifying a schedule of major noise generating construction activities. This plan shall identify a noise control 'disturbance coordinator' and procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance. This plan shall be made publicly available for interested community members.
- x. The disturbance coordinator will be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g. starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. The telephone number for the disturbance coordinator at the construction site will be posted and included in the notice sent to neighbors regarding the construction schedule.
- g. **Cultural Resources Standard Project Conditions.** When the project site has been cleared of existing structures, features, and fills (as much as will be removed), exposing the native soil below, the property should be quickly examined by a qualified archaeologist to look for archaeological materials.
 - i. In the event any significant cultural materials are encountered, all construction within a radius of 50-feet of the find would be halted, the Director of Planning, Building and Code Enforcement would be notified, and a professional archaeologist will examine the find and make recommendations regarding the significance of the find and the appropriate mitigation. Recommendations could include collection, recordation, and analysis of any significant cultural materials.
 - ii. If human remains are discovered, the Santa Clara County Coroner will be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he would notify the Native American Heritage Commission, would attempt to identify "most likely" descendants of the deceased.
 - iii. If the Director of Planning, Building and Code Enforcement finds that the archaeological find is not a significant resource, work would resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted.

- iv A final report will be prepared by the project archaeologist when a find is determined to be a significant archaeological resource, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, and testing, and other recovered information, and conclusions.

34. **Public Works Clearance for Building Permits:** Prior to the issuance of Building permits the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<http://www.sanjoseca.gov/devresources>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:**
 - i. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San Jose EIR.
 - ii. Traffic impact fees in the amount of \$252,940, as identified in Planning Permit PD13-049, have been paid in full.
 - iii. The Traffic Operations Analysis prepared by Hexagon Transportation Consultants, Inc. dated August 18, 2014 was submitted and reviewed, no further analysis is required.
- c. **Grand Boulevard:** This project fronts North First Street/Monterey Highway which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design

- alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- g. **Flood: Zone AO, Depth 1:**
- i. Elevate the lowest floor more than 1 foot above the highest existing adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
 - ii. An Elevation Certificate (FEMA Form 81-31) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.

- iii. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
- h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- i. **Undergrounding:** The In-Lieu Undergrounding Fee for project frontages along Technology Place (formerly Matrix Boulevard) and North First Street has been paid in the amount of \$814,412 per Planning Permit PD13-049.
- j. **Assessments:** This project proposes a hotel use. The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties were expected to participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San Jose Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The base special tax is 4% of gross rents, and may be subject to an additional special tax up to 1% of gross rents. Please contact Thomas Borden at (408) 535-6831 to coordinate the annexation process.
- k. **Street Improvements:**
 - i. A minor signal modification is required to provide video detection on all approaches at the intersection of North 1st Street and Metro Drive.
 - ii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iii. Proposed driveway width to be 26'.
 - iv. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - v. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- l. **Electrical:**
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.

- iii. Provide clearance for electrical equipment from driveways and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
 - iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.
 - v. Final location and clearance of new electroliers may vary per field conditions to the satisfaction of the Director of Public Works.
 - m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - n. **Referrals:** This project should be referred to the Valley Transportation Authority (VTA) as a separate encroachment permit may be required.
35. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **23rd** day of February 2022.

Christopher Burton, Director
Planning, Building, and Code Enforcement

Deputy